

SERVED: April 22, 1999

NTSB Order No. EA-4754

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of April, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14455
v.)	
)	
CHRISTOPHER SMITH)	
)	
Respondent.)	
_____)	

ORDER DENYING RECONSIDERATION

Respondent seeks reconsideration of NTSB Order No. EA-4622, served February 17, 1998, wherein the Board affirmed the law judge's finding that respondent, an airline transport pilot certificate holder, violated section 105.29(a) of the Federal Aviation Regulations for allowing parachutists to jump through clouds.¹

¹ The law judge waived sanction on account of respondent's timely filing of a report pursuant to the Aviation Safety Reporting System program and the Administrator did not appeal that ruling.

Much of respondent's petition repeats arguments that were set forth on appeal. Those arguments were thoroughly considered by the Board in connection with its original decision, and nothing in respondent's petition establishes that they merit further discussion. Respondent's petition also points to the finding of a Department of Transportation administrative law judge, rendered in a civil penalty action brought against the parachutists from the flight at issue in this proceeding, that the parachutists had not parachuted through clouds. That determination, contrary to respondent's extended argumentation, has no bearing on the validity of the findings made by our law judge, based on his assessment of the weight and credibility to be accorded the testimony of some of the same witnesses.²

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above order.

² Respondent's assertion that FAA inspector Swank "recanted" his testimony when he testified during the civil penalty hearing that the parachute jump could have been accomplished safely is erroneous. We have reviewed the record in this case, as well as a transcript of the civil penalty hearing provided as an appendix to the Administrator's reply brief, and Mr. Swank's consistent testimony at both hearings was that, although they did not, the parachutists might hypothetically have avoided passing through clouds. In any event, the issue of whether the parachutists could have avoided clouds is not relevant here because jump pilots have an affirmative duty to "determine whether the intended jump can and will be made in compliance with cloud clearance requirements." Administrator v. Foss, NTSB Order No. EA-4631 at 5 (1998) (emphasis added).